UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

JOHN and ANITA BURNS,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	**Civil no. 00-89-B-S**
	)	
THE TOWN OF LAMOINE, et al.	)	
	)	
Defendants.	)	

ORDER AND MEMORANDUM OF DECISION

SINGAL, District Judge

Plaintiffs John and Anita Burns, appearing pro se, have filed this action against twenty-two defendants, including Defendant Theresa L. Davis. Plaintiffs allege that the twenty-two defendants conspired against them to revoke a permit allowing the installation of a septic system on Plaintiffs' property. Plaintiffs' claims against Defendant are based on 42 U.S.C. §§ 1983, 1985 and 1986.

Before the Court is Defendant Davis's Motion to Dismiss and for Summary Judgment, pursuant to Fed. R. Civ. P. 12(b)(6) and 56(b). Davis, as well as other defendants, have submitted affidavits and other testimony to the Court regarding this case. The Court, however, excludes these affidavits and other materials while considering the Motion to Dismiss.[1] The Court considers Defendant's Motion to Dismiss, but does not address the alternate request for summary judgment. For the reasons discussed below, Defendant's Motion to Dismiss is GRANTED. Plaintiffs' Complaint is DISMISSED WITH PREJUDICE.

[1] It is within the discretion of the Court whether to rely on only the pleadings to render a decision regarding a motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(6), or to incorporate affidavits and other materials and make an order as to summary judgment. See Whiting v. Maiolini, 921 F.2d 5, 6 (1st Cir. 1990).

I. STANDARD OF REVIEW

The Court recognizes that Plaintiffs are pro se litigants. In an effort to safeguard the attempts of pro se litigants to bring successful lawsuits, the Court construes pro se complaints liberally. Ahmed v. Rosenblatt, 118 F.3d 886, 890 (1st Cir. 1997). "However, pro se status does not insulate a party from complying with procedural and substantive law." Id.

Generally, a court may dismiss a claim under Fed. R. Civ. P. 12(b)(6) only if it clearly appears that, on the facts alleged, the plaintiff cannot recover on any viable legal theory. Wagner v. Devine, 122 F.3d 53, 55 (1st Cir. 1997). If under any theory the allegations stated in the complaint are sufficient to state a cause of action, a motion to dismiss must be denied. Knight v. Mills, 836 F.2d 659, 664 (1st Cir. 1987). When considering a motion to dismiss, courts must accept as true all of a plaintiff's well-pleaded factual averments and indulge all reasonable inferences in the plaintiff's favor. Aulson v. Blanchard, 83 F.3d 1, 3 (1st Cir. 1996). Pursuant to this standard, the Court lays out the facts of the case below.

II. BACKGROUND

The Complaint alleges that Plaintiffs John and Anita Burns are residents of North Reading, Massachusetts, who own property in Lamoine, Maine. The couple applied to the town government for a permit to install a septic system, and subsequently obtained subsurface wastewater permit #519. On or about August 5, 1991, however, several persons, including Theresa Davis, the Town of Lamoine, John Fink and Sally Bell,

allegedly conspired against the Burns's to cause the permit to be revoked. Fink sent a letter dated August 7, 1991 to the Burns's informing them of the revocation.[2]

Claiming that permit #519 was revoked in violation of their Fifth and Fourteenth Amendment rights, the Burns's filed a complaint on July 23, 1998 against three defendants: the Town of Lamoine, John Fink and Sally Bell. See Burns v. Town of Lamoine, 43 F. Supp. 2d 63 (D. Me. 1999). Construing Plaintiffs' complaint as a civil rights claim under 42 U.S.C. § 1983, the Court granted defendants' motion for summary judgment on March 11, 1999 on the basis that the Burns's claim was barred by the statute of limitations. See id.

The Burns's again filed suit with the Court over the revocation of the permit.[3] On May 3, 2000, the Burns's filed the Complaint against the three defendants of the prior lawsuit as well as nineteen other parties, including Davis. Claiming that Davis violated

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[2] Plaintiffs do not mention this letter in their Complaint. Ordinarily, courts may not consider facts extraneous from the pleadings when considering a motion to dismiss. The Court, however, may consider facts established from prior court opinions according to the principles of issue preclusion, also referred to as collateral estoppel. In Plaintiffs' previous lawsuit, Burns v. Town of Lamoine, 43 F. Supp. 2d 63 (D. Me. 1999), the Court found it undisputed that Fink sent a letter to Plaintiffs on August 7, 1991, notifying them of the permit's revocation. See id. at 66. Issue preclusion applies when five elements are met: (1) the issue was actually litigated in the prior lawsuit, (2) there was a valid and final judgment, (3) the issue was essential to the judgment rendered, (4) the issue was the same for both the prior and present lawsuits, and (5) the parties in the two lawsuits share sufficiently close identity. Grella v. Salem Five Cent Sav. Bank, 42 F.3d 26, 30 (1st Cir. 1994); NLRB v. Donna-Lee Sportswear Co., 836 F.2d 31, 34 (1st Cir. 1987). The issue was actually litigated because both parties agreed that Fink sent the letter on August 7th. See Burns, 43 F. Supp. 2d at 68. The Court entered summary judgment, which is a valid and final judgment. See id. at 70. Because the earlier court ruling was based on the statute of limitations, the issue of when the Burns's received the letter informing them of the revocation was essential to the case. See id. at 68. The issue was the same in the prior case as it is in the instant case. See id. Finally, the parties in the first and second cases share sufficiently close identities. See id. at 65 (Davis was one of the persons involved in the circumstances surrounding the revoked permit); see also In re El San Juan Hotel Corp., 841 F.2d 6, 10 (1st Cir. 1988) (finding persuasive several holdings by other Circuits that preclusion is appropriate if "the new defendants have a close and significant relationship with the original defendants, such as when the new defendants were named as conspirators in the first proceeding but were not joined in the action."). Therefore, issue preclusion applies, and the Court may consider the August 7th letter in its analysis of Defendant's Motion to Dismiss.

[3] Plaintiffs allege that later they managed to obtain another subsurface wastewater permit, #904, which also was revoked illegally and unconstitutionally. Plaintiffs, however, do not allege that Davis had anything to do with permit #904. Therefore, the Court ignores permit #904 and the circumstances surrounding permit #904 for the consideration of Defendant's Motion to Dismiss.

their constitutional rights by conspiring to revoke the permit, Plaintiffs assert counts against her pursuant to sections 1983, 1985 and 1986 of the Civil Rights Act, 42 U.S.C. §§ 1981 – 2000bb-3.

III. DISCUSSION

A. Claim Preclusion

In her Motion to Dismiss, Defendant argues that Plaintiffs' case is barred pursuant to the principle of claim preclusion, often referred to as res judicata. Claim preclusion is the doctrine that once a court has rendered judgment on the merits of a claim, parties cannot attempt to relitigate issues that were raised or could have been raised in the first action. Allen v. McCurry, 449 U.S. 90, 94 (1980). Claim preclusion, and the similar doctrine of issue preclusion, "relieve parties of the cost and vexation of multiple lawsuits, conserve judicial resources, and, by preventing inconsistent decisions, encourage reliance on adjudication." Id.

Last year, the Court rendered a judgment regarding the same controversy stemming from the revoked subsurface wastewater permit. See Burns v. Town of Lamoine, 43 F. Supp. 2d 63 (D. Me. 1999). At that time, the Court found that Plaintiffs' claims – construed as section 1983 claims – against the Town of Lamoine, John Fink and Sally Bell were barred by the statute of limitations. See id.

"For a claim to be precluded, the following elements must be established: (1) a final judgment on the merits in an earlier action, (2) sufficient identity between the causes of action asserted in the earlier and later suits, and (3) sufficient identity between the parties in the two suits." Porn v. National Grange Mut. Ins. Co., 93 F.3d 31, 34 (1st Cir.

1996).

Regarding the first requirement, the dismissal of a claim as time-barred constitutes a final judgment on the merits. Kale v. Combined Ins. Co. of America, 924 F.2d 1161, 1164 (1st Cir. 1991) ("It is beyond peradventure that the dismissal of a claim as time-barred constitutes a judgment on the merits, entitled to preclusive effect."). Thus, the Court's 1999 decision in Burns v. Town of Lamoine, dismissing Plaintiffs' claims as time-barred, amounts to a final judgment on the merits. See Burns, 43 F. Supp. 2d at 70.

When considering whether sufficient identity exists between causes of action, the First Circuit has adopted the "transactional approach." United States v. Cunan, 156 F.3d 110, 114 (1st Cir. 1998). Under this approach, a final judgment "will extinguish subsequent claims with respect to all or any part of the transaction, or series of connected transactions, out of which the action arose." Porn, 93 F.3d at 34 (internal quotations omitted). Even if a plaintiff offers different legal theories for a subsequent cause of action, if the former and latter causes of action are based on the same occurrence, there will be sufficient identity between the causes of action. Id.

In the present case, the transaction upon which the first cause of action was based – revocation of the permit – is the exact same transaction upon which the instant case is predicated. See Burns, 43 F. Supp. 2d at 66. Against this Defendant, Plaintiffs employ the same legal theory that this Court found was applicable in Plaintiffs' previous case, section 1983. Now, Plaintiffs also argue that the permit revocation violated sections 1985 and 1986, which create causes of action for conspiracy to interfere with the civil rights of others. Even though Plaintiffs offer two new theories of law, they allege no new facts to support that a conspiracy was behind the revocation of the permit. Cf. Landrigan

v. City of Warwick, 628 F.2d 736, 740-41 (1st Cir. 1980) (precluding excessive use of force claim under section 1983 because plaintiff had recovered from defendant in previous state court suit for police brutality, but allowing claims pursuant to sections 1985 and 1986 to go forward because plaintiff alleged additional facts regarding subsequent conspiracy to cover up the excessive use of force). In this case, there is sufficient identity between the causes of action brought by Plaintiffs in both the previous and present cases.

Addressing the third criterion for claim preclusion, historically only parties involved in the original lawsuit could raise the argument of claim preclusion in a later proceeding. Today, however, parties that share sufficient identity with the original parties also may invoke claim preclusion. Gonzalez v. Banco Central Corp., 27 F.3d 751, 757 (1st Cir. 1994). Even though Defendant was not a party to Plaintiffs' first lawsuit, she was named as one of those involved in the controversy. See Burns, 43 F. Supp. 2d at 65. In the present case, Plaintiffs claim that Defendant and the original defendants acted as co-conspirators against Plaintiffs. As an alleged co-conspirator, Defendant shares sufficient identity with the original defendants. See In re El San Juan Hotel Corp., 841 F.2d 6, 10 (1st Cir. 1988) (finding persuasive several holdings by other Circuits that claim preclusion is appropriate if "the new defendants have a close and significant relationship with the original defendants, such as when the new defendants were named as conspirators in the first proceeding but were not joined in the action."). Therefore, the Court finds that Plaintiffs' claims against Defendant meet the three requirements for claim preclusion.

Apart from the three criteria above, courts also require that "the precluded party

must have had a full and fair opportunity to litigate her case in the earlier proceeding." Cruz v. Melecio, 204 F.3d 14, 19 (1st Cir. 2000). In 1998, Plaintiffs filed with the Court a lawsuit regarding the revocation of permit #519, a suit that was essentially identical to Plaintiffs' current case against Davis. See Burns, 43 F. Supp. 2d at 65. This Court considered those claims and determined that they were time-barred. See id. Consequently, Plaintiffs have had a full and fair opportunity to litigate their claim. See Kale, 924 F.2d at 1168 (precluding claim because of time-bar and finding that plaintiff had "full and fair opportunity to litigate all his claims").

B. Statute of Limitations

Alternately, even if Plaintiffs' case against Davis was not subject to claim preclusion because of the Court's previous decision in Burns v. Town of Lamoine, 43 F. Supp. 2d 63 (D. Me. 1999), the Court finds that Plaintiffs' claims against Davis are independently subject to dismissal due to the statute of limitations.

The phrase "statute of limitations" refers to a time limit, enacted into statute by a legislature, that prevents plaintiffs from bringing lawsuits after a certain amount of time. "[S]tatutory limitation periods are 'designed to promote justice by preventing surprises through the revival of claims that have been allowed to slumber until evidence has been lost, memories have faded, and witnesses have disappeared. The theory is that even if one has a just claim it is unjust not to put the adversary on notice to defend within the period of limitation and that the right to be free of stale claims in time comes to prevail over the right to prosecute them.'" American Pipe & Constr. Co. v. Utah, 414 U.S. 538,

554 (1974) (quoting Order of R.R. Telegraphers v. Railway Express Agency, Inc., 321 U.S. 342, 348-49 (1944)).

1. 42 U.S.C. § 1983

Section 1983 of the Civil Rights Act creates a cause of action against persons acting under the color of law who are responsible for the "deprivation of any rights, privileges, or immunities secured by the Constitution and laws…" 42 U.S.C. § 1983. The section does not state what time limitations apply to actions brought under the statute. Section 1988 instructs courts to look to state law when filling in the gaps that Congress left in drafting the Civil Rights Act. 42 U.S.C. § 1988. Pursuant to this instruction, the Supreme Court has ruled that the limitations period for a claim arising under section 1983 is the general statute of limitations applicable to personal injury actions under the law of the forum state. Owens v. Okure, 488 U.S. 235, 249-50 (1989); Wilson v. Garcia, 471 U.S. 261, 276 (1985). In Maine, the general statute of limitations for personal injury lawsuits is six years. See 14 M.R.S.A. § 752. Therefore, six years is the limitations period for section 1983 actions in Maine. See Small v. Inhabitants of Belfast, 796 F.2d 544, 549 (1st Cir. 1986).

A civil rights claim under section 1983 accrues when the plaintiff knows, or has reason to know, of the injury upon which the claim is based. Street v. Vose, 936 F.2d 38. 40 (1st Cir. 1991). Plaintiffs' claim is based on the revocation of the permit, which occurred on or about August 5, 1991. Plaintiffs knew, or had reason to know, of the revocation because Fink sent them a letter on August 7, 1991. Thus, Plaintiffs' cause of action accrued on or about August 7, 1991, and the six-year statute of limitations ran on

or about August 7, 1997. Plaintiffs, however, filed this lawsuit on May 3, 2000. Thus, Plaintiffs filed their Complaint two and a half years after the limitations period had ended. Even though Plaintiffs come before the Court pro se, they are still bound by relevant statutes of limitations. See, e.g., Amann v. Town of Stow, 991 F.2d 929, 933-34 (1st Cir. 1993) (dismissing pro se complaint because it was time-barred). Thus, the Court must dismiss Plaintiffs' section 1983 claim because it is time-barred.

2. 42 U.S.C. § 1985

Section 1985 of the Civil Rights Act allows plaintiffs to initiate actions against those who conspire to interfere with the plaintiffs' civil rights. 42 U.S.C. § 1985. Like section 1983, section 1985 does not specify a limitations period. Moreover, neither the United States Supreme Court nor the First Circuit Court of Appeals have ruled on the appropriate limitations period for section 1985 actions.

The analyses used by the Supreme Court while discussing the limitations period for section 1983 claims, however, make clear that section 1985 claims brought in Maine must face the same limitations period as section 1983 claims: six years. See Owens, 488 U.S. at 242-50; Board of Regents of the Univ. of New York v. Tomanio, 446 U.S. 478, 488-89 (1980). Interpreting section 1988, the Supreme Court has devised two methods for determining the appropriate limitations period for a civil rights claim: (1) find the most analogous statutes of limitations under the law of the forum state, and (2) among those analogous statutes of limitations, apply the limitations period among them that is the most general and all-inclusive. See Owens, 488 U.S. at 243, 245 (in order to prevent confusion and foster consistency, instructing courts to apply general limitations period for

section 1983 claims because "[e]very State has multiple intentional tort limitations provisions, carving up the universe of intentional torts into different configurations … [but] every State has one general or residual statute of limitations governing personal injury actions."); Board of Regents, 446 U.S. at 488 (instructing courts to apply the "most analogous state statute of limitations" for civil rights claims, such as those under sections 1981 and 1983).

Maine's statutes do not specify a statute of limitations for torts of conspiracy to interfere with another's civil rights. By statute, there are specific limitations periods in Maine for disputes arising out of: contracts, trusts, bail bonds, medical malpractice, legal malpractice, architectural malpractice, land surveyor malpractice, skiing injuries, hang-gliding injuries, criminals profiting from their crimes, sexual acts toward minors, and the following intentional torts: assault, battery, false imprisonment, slander and libel. 14 M.R.S.A. §§ 751, 752-A – 754. For actions without specific limitations periods, the all-purpose limitations period of six years applies. See id. § 752.

Conspiracy to interfere with one's civil rights is not analogous to any statutory limitations period because such a tort does not correspond with any of the enumerated actions in the above list. Thus, the Court applies the residuary limitations period of section 752 to Plaintiffs' section 1985 claim. Under this six-year statute of limitations, Plaintiffs' section 1985 claim is time-barred.

3. 42 U.S.C. § 1986

Section 1986 creates a cause of action against persons who have allowed a conspiracy, within the meaning of section 1985, to occur without trying to prevent it.

Although sections 1983 and 1985 do not mention appropriate limitations periods, section 1986 does specify a limitations period of one year. Plaintiffs' claim accrued on or about August 7, 1991, so the limitations period ended on or about August 7, 1992. Thus, Plaintiffs' claim against Defendant pursuant to section 1986 is time-barred as well.

CONCLUSION

For the reasons discussed above, Defendant's Motion to Dismiss is GRANTED. The Court DISMISSES Plaintiffs' Complaint WITH PREJUDICE.

SO ORDERED.

GEORGE Z. SINGAL
United States District Judge

Dated this 21st day of September, 2000.

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